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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1903.

No. 142.

EDWARD E. BESSETTE

vs.

W. B. CONKEY COMPANY.

On Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR APPELLEE.

JACOB NEWMAN,
SALMON O. LEVINSON,
BENJAMIN V. BECKER,
Counsel for Appellee.

—IN THE—

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STATEMENT OF FACTS.

The facts disclosed by the certificate of the Circut Court of Appeals may be briefly summarized as follows:

On August 24, 1901, the W. B. Conkey Company, a corporation of Illinois, filed its bill in the United States Circuit Court for the District of Indiana, against James K. Russell and many others, citizens of the State of Indiana (appellant Edward E. Bessette not being a party to the cause). The bill prayed for an injunction against the defendants, their confederates, agents and servants, restraining them from interfering with the operation of complain-

ant's printing house in Hammond, Indiana. Upon the filing of the bill a temporary restraining order was issued restraining and enjoining the defendants, their confederates, servants and agents, and all persons then or thereafter aiding or abetting the defendants, or any of them, or confederating with or acting in concert with them, or any of them, from interfering with, hindering or obstructing the business of the complainant and from entering upon its grounds and factory for the purpose of interfering with, hindering or obstructing its business or from compelling or inducing or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of complainant's employees to refuse or fail to perform their duty as such employees, or to leave complainant's service. The order also restrained the defendants from collecting in or about the approaches to complainant's buildings for the purpose of intimidating, threatening or coercing any of complainant's employees, and also interfering with employees in getting to and from their work.

On September 13, 1901, the complainant filed its petition in the cause, setting forth that various persons, among them some of the defendants to the bill, and also appellant, Bessette, were in contempt of the restraining order, and asked that a writ of attachment be issued against them, and that they be held to answer for such contempt. This petition charged, among other things, that Bessette and others, not defendants to the bill of complaint, had been, and were, at Hammond, Indiana, conspiring and confederating with the defendants to do the things prohibited by said restraining order, and that they had actual notice and knowledge of the said restraining order; that said Bessette and the others named had, on numerous occasions and in various ways, particularly set forth in said petition, knowingly and delib-

erately violated the restraining order, within the jurisdiction of the court.

Upon the filing of the petition the respondents therein, including Bessette, were ordered to show cause why they should not be punished for contempt. Bessette appeared and filed his answer, and upon a trial the court found him guilty of contempt, as charged, and imposed a fine of $250, payable to the United States, and costs of the proceedings against him. From this order, or judgment, imposing a fine, Bessette prayed an appeal to the Circuit Court of Appeals, which was allowed, and the appeal duly docketed in the Circuit Court of Appeals.

That court being in doubt as to its jurisdiction in the premises certified to this court for decision the following questions:

First. Whether the Circuit Court of Appeals has jurisdiction to review an order or judgment of a Circuit Court of the United States finding a person guilty of contempt for violation of an order of that court and imposing a fine for the contempt.

Second. Whether the "Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes" approved March 3, 1891 (26 Statutes, 826), authorizes a review by a Circuit Court of Appeals of a judgment or order of a Circuit Court of the United States finding a person, not a party to the suit, guilty of contempt for violation of an order of that Court made in such suit and imposing a fine for such contempt.

Third. Whether if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the Circuit Court of Appeals by appeal.

Fourth. Whether, if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the Circuit Court of Appeals by writ of error.

ARGUMENT.

I.

An order adjudging a person in contempt and imposing a punishment therefor can not be reviewed either by appeal or writ of error.

There can be no doubt that by the common law of England a judgment finding a person guilty of contempt could not be reviewed by appeal or writ of error, or on habeas corpus. In Crosby's case, 3 Wils., 188, Mr. Justice BLACKSTONE said:

> "All courts, by which, I mean to include the two houses of parliament, and the courts of Westminster Hall, can have no control in matters of contempt. The sole adjudication of contempts, and the punishment thereof, in any manner, belongs exclusively, and without interfering, to each respective court. Infinite confusion and disorder would follow if courts could, by writs of habeas corpus, examine and determine the contempts of others. This power to commit results from the first principles of justice, for if they have power to decide, they ought to have power to punish; no other court shall scan the judgment of a superior court, or the principal seat of justice; as I said before, it would occasion the utmost confusion, if every court of this Hall should have power to examine the commitments of the other courts of the Hall for contempts;

so that the judgment and commitment of each respective court, as to contempts, must be final, and without control. It is a confidence that may with perfect safety and security, be reposed in the judges and the houses of parliament."

Crosby's Case, 3 Wils., 188, 204.

The opinion cited was delivered in 1771, just prior to the American Revolution, and may thus be taken as expressing the law of England and her colonies at the time of the separation of the colonies from the mother country.

In *ex parte* Kearney, 7 Wheat., 38, decided by this court in 1822, which we discuss later, Mr. Justice Story, delivering the opinion of the court, cited with approval, and followed the decision in Crosby's case, holding that this court would not review a commitment for contempt of another court.

In the case of *ex parte* Yates, 4 Johnson, 314, Chief Justice KENT, after reviewing the English cases and referring to the case of the Earl of Shaftsbury, 1 Mod., 144, said:

> "The court, in that case, seem to have laid down a principle from which they never have departed, and which is essential to the due administration of justice. This principle, that every court, at least of the superior kind in which great confidence is placed, *must be the sole judge in the last resort of contempts arising therein*, is more explicitly defined and more emphatically enforced in the two subsequent cases of *The Queen* vs. *Paty and others*, and of *The King* vs. *Crosby*."

Further on, in commenting on these and other cases, Chief Justice KENT says:

> "I have cited the opinion of these judges much at large because I could not hope to improve upon the strength of their observations, and I entertain the most perfect conviction that the law, as they declared it in

this case, was well understood and definitely established as part of the common law of England."

4 Johnson, 369, 372.

The same rule has been declared by the Supreme Court of Pennsylvania in these words:

"Does anybody doubt the jurisdiction of the District Court to punish contempt? Certainly not. All courts have this power, and must necessarily have it; otherwise they could not protect themselves from insult or enforce obedience to their process. Without it they would be utterly powerless. The authority to deal with an offender of this class belongs exclusively to the court in which the offense is committed; and no other court, not even the highest, can interfere with its exercise. either by writ of error, mandamus, or *habeas corpus*."

Williamson's Case, 26 Penn. St., 9, 18.

After the decision in *ex parte* Kearney, *supra*, the subject did not again come before this court until the case of *New Orleans* vs. *Steamship Co.*, 20 Wall., 387. The court then took occasion to reaffirm *ex parte* Kearney and to hold the order of commitment not reviewable even on appeal from the final decree.

In the case of *New Orleans* vs. *Steamship Co.* a bill had been filed by the Steamship Company against the City of New Orleans in the United States Circuit Court. While that bill was pending Clark, the mayor of the city, filed a bill against the Steamship Company in the state court and obtained an injunction restraining the company in certain matters within the scope of the litigation in the federal court. At the final hearing a decree was entered enjoining the city from interfering with the company's property and directing the city to pay the company $8,000 damages, and as a part of this final decree Clark was

found to be in contempt and fined $300. From this decree an appeal was taken.

After reviewing the decree in other respects this court said:

> "The fine of $300 imposed upon the mayor is beyond our jurisdiction. Contempt of court is a specific criminal offence. The imposition of the fine was a judgment in a criminal case. That part of the decree is as distinct from the residue as if it were a judgment upon an indictment for perjury committed in a deposition read at the hearing. Crosby's case, 3 Wils., 188; Williamson's case, 26 Pennsylvania State, 24; *ex parte* Kearney, 7 Wheaton, 41. This court can take cognizance of a criminal case only upon a certificate of division in opinion. In Crosby's case Mr. Justice BLACKSTONE said: 'The sole adjudication for contempt and the punishment thereof belongs exclusively and without interfering to each respective court.'"
>
> *New Orleans* vs. *Steamship Company*, 20 Wall., 392.

Again, in *Hayes* vs. *Fischer*, 102 U. S., 121, an attempt was made to have a conviction for contempt reviewed directly by a writ of error. In that case an interlocutory injunction was granted restraining the defendant below from infringing a patent. Complaint having been made against him for a violation of this injunction, proceedings were instituted against him for contempt, and after a hearing the court found him guilty of contempt and ordered that he pay a fine and stand committed until the order was obeyed. To reverse this order he sued out a writ of error. On a motion to dismiss the writ, this court said:

> "If the order complained of is to be treated as part of what was done in the original suit, it cannot be brought here for review by writ of error. Errors in equity suits can only be corrected in this court on appeal, and that after a final decree. This order, if part

of the proceedings in the suit, was interlocutory only.

"If the proceeding below, being for contempt, was independent of and separate from the original suit, it cannot be re-examined here either by writ of error or appeal. This was decided more than fifty years ago in *ex parte* Kearney, 7 Wheat., 38, and the rule then established was followed as late as *New Orleans* vs. *The Steamship Company*, 20 Wall., 387. It follows that we have no jurisdiction."

Hayes vs. *Fischer*, 102 U. S., 121, 122.

Since the decision of this case there seems no room for doubt that an order fining a person for contempt is not reviewable either by writ of error or appeal, and that the adjudication of the court committing for contempt is final if made in a case in which it has jurisdiction. If the court is without jurisdiction, the party has his remedy by *habeas corpus*. But if the jurisdiction is conceded, there is no way known to the law by which a mere error in the proceeding may be reviewed.

In *ex parte Fisk*, 113 U. S., 713, Mr. Justice MILLER said:

"There can be no doubt of the proposition that the exercise of the power of punishment for contempt of their orders by courts of general jurisdiction is not subject to review by writ of error or appeal to this court. *Nor is there in the system of federal jurisprudence any relief against such orders when the court has authority to make them except through the court making the order, or possibly by the exercise of the pardoning power.*

"This principle has been uniformly held to be necessary to the protection of the court from insults and oppressions while in the ordinary exercise of its duties and to enforce its judgments and orders

necessary to the due administration of law and the protection of the rights of suitors."

Ex parte Fisk, 113 U. S., 718.

This principle is so firmly established that in 1897 this court allowed a writ of certiorari to an order of the United States Circuit Court in California adjudging a party in contempt, the court saying:

"Judgments in proceedings in contempt are not reviewable here on appeal or error. *Hayes* vs. *Fischer*, 102 U. S., 121; *in re Debs*, 158 U. S., 564, 573; 159 U. S., 251. But they may be reached by certiorari in the absence of any other adequate remedy. The writ of certiorari will be allowed to bring up the record so that the order adjudging Chetwood and his counsel in contempt for being concerned in suing out the writs of error and directing them or either of them to refrain from prosecuting the one writ in the name of the Bank and to dismiss the other, may be revised and annulled."

In re Chetwood, 165 U. S., 443, 462.

II.

The order finding Bessette guilty of contempt and sentencing him to pay a fine is in effect a judgment in a criminal case and can be reviewed, if at all, only by writ of error.

As early as the case of *ex parte Kearney*, 7 Wheaton, 38, this court said:

"If this were an application for a *habeas corpus* after judgment on an indictment for an offense within the jurisdiction of the Circuit Court, it could hardly be maintained that this court could revise such a judgment or the proceedings which led to it, or set it aside and discharge the prisoner. There is in principle no distinction between that case and the present; for

when a court commits a party for contempt their adjudication is a conviction, and their commitment in consequence is execution."

And in the case of *New Orleans* vs. *The Steamship Company*, 20 Wallace, 392, it was said:

"Contempt of court is a specific criminal offense. The imposition of the fine was a judgment in a criminal case. That part of the decree is as distinct from the residue as if it were a judgment upon an indictment for perjury committed in a deposition read at the hearing."

This principle has been frequently reasserted by this court.

In *Tinsley* vs. *Anderson*, 171 U. S., 101, this court said:

"It was argued in behalf of Tinsley that the judgment committing him for contempt was not reviewable by this court, citing the statement in Chetwood's case, 165 U. S., 443-462, that 'judgments in proceedings in contempt are not reviewable here on appeal or error.' * * * But that statement was made in regard to such judgments in independent proceedings for contempt in the Circuit Courts of the United States, and the reason is, as in the cases referred to in *Hayes* vs. *Fischer*, above cited, that such judgments were considered as judgments in criminal cases, in which this court had no appellate jurisdiction from those courts. *Ex parte Kearney*, 7 Wheat., 38, 42; *New Orleans* vs. *Steamship Co.*, 20 Wall., 387, 392.

"But the appellate jurisdiction of this court from the state court extends to a final judgment or decree in any suit, civil or criminal, in the highest court of a state where a decision in the suit could be had against a title, right, privilege or immunity specially set up and claimed under the constitution or a treaty or statute of the United States."

Tinsley vs. *Anderson*, 171 U. S., 101, 105.

As late as the case of *O'Neal* vs. *The United States*, 190 U. S., 36, the same rule was reasserted. In that case a trustee in bankruptcy filed a petition in the District Court charging O'Neal with contempt in committing an assault upon him. A rule to show cause was entered, and after a hearing O'Neal was found guilty and sentenced to imprisonment. The District Court certified to the Supreme Court the question of its jurisdiction. Mr. Chief Justice FULLER, delivering the opinion of the court, after holding that the jurisdiction of the District Court was not involved on the appeal, said:

> "And while proceedings in contempt may be said to be *sui generis*, the present judgment is in effect a judgment in a criminal case over which this court has no jurisdiction on error."
>
> *O'Neal* vs. *United States*, 190 U. S., 36, 38.

Thus it follows that the judgment appealed from by Bessette in the case at bar is a judgment in a criminal case, a conviction for a criminal offense, and, therefore, can be reviewed, if at all, only by writ of error, and not by appeal.

Bucklin vs. *U. S.*, 159 U. S., 680.

The two grounds upon which orders, like the one under consideration in this proceeding, have been held not to be reviewable are—*first*, that the finding by any court of the fact of contempt, is a matter exclusively for the determination of that court; and, *secondly*, that such orders are judgments in criminal cases of which this court formerly had no appellate jurisdiction. Both of these grounds were relied upon in *ex parte* Kearney and the subsequent cases which we have cited.

Since the passage of the Circuit Court of Appeals Act of March 3, 1891, the impression seems to have arisen in some quarters that the decisions of this court, to which we

have referred, were no longer applicable. According to this theory, which has taken root in the Second Circuit, all the cases are to be explained by the lack of power in this court to review criminal cases.

The Circuit Court of Appeals for the Second Circuit held, that inasmuch as it had jurisdiction to review judgments in criminal cases, it has, under some circumstances, power to review commitments for contempt.

But that court, while claiming such jurisdiction, has always insisted *that it is to be exercised only upon writ of error and not on appeal.*

Thus in the case of *Sessions* vs. *Gould*, 63 Fed. Rep., 1001, where an appeal was taken from an order directing a defendant to pay a fine for violation of a preliminary injunction, the Circuit Court of Appeals for the Second Circuit dismissed the appeal for want of jurisdiction, saying:

> "While there is no doubt of the jurisdiction of this court under Section 6 of the Act to Establish Circuit Courts of Appeals (26 Stat., 826) to review a criminal judgment, not a conviction of a capital or otherwise infamous crime, it can only do so upon a writ of error. A judgment in a common law proceeding is not removed by an appeal."
>
> *Sessions* vs. *Gould*, 63 Fed. Rep., 1002.

Subsequently the defendant in that case sued out a writ of error and the Court of Appeals then took jurisdiction.

Sessions vs. *Gould*, 67 Fed. Rep., 164.

In *Butler* vs. *Fayerweather*, 91 Fed. Rep., 458, and in *Nassau Elec. R. R. Co.* vs. *Sprague Elec. Ry.*, 95 Fed. Rep., 415, the same court conceded that under the decision of this court in the Debs case, 158 U. S., 564, its decision in the case of *Sessions* vs. *Gould* was erroneous, and that the order could only be reviewed upon an appeal from the final decree.

The court, however, distinguished the Debs case from a case where a person not a party to the suit was committed for contempt, and held that in such a case the person committed might still have his writ of error, and they adhered to this distinction in the case of *Flower* vs. *McGinnis*, 112 Fed. Rep., 377.

In the other circuits the precise question does not seem to have arisen, although in *Morgan* vs. *Gibson*, 122 Fed. Rep., 420, the Circuit Court of Appeals for the Eighth Circuit reviewed a judgment for contempt on an appeal from the final decree.

The result of these cases is that the Court of Appeals for the Second Circuit, the only United States Court with appellate jurisdiction which allows a review of a commitment for contempt before final decree, allows it, however, only to one not a party to the case, and then only upon writ of error and not upon appeal. There is in short absolutely no authority for the practice adopted in the case at bar, by which Bessette has undertaken to have the order of commitment for contempt reviewed by a direct appeal from that order.

The fourth question certified by the Circuit Court of Appeals for the Seventh Circuit presents the question whether the order appealed from by Bessette could be reviewed upon writ of error. As we view the matter, that question is immaterial. Even if appellant Bessette would have been entitled to a writ of error, he has not chosen to avail himself of that remedy, and the only question properly before this court is whether he was entitled to an appeal. This is admitted by his counsel in his brief (p. 171).

The fourth question certified by the Court of Appeals may therefore be disregarded.

III.

The Act of March 3, 1891, creating Circuit Courts of Appeals did not give an appeal or writ of error from orders or judgments which prior thereto were not reviewable.

The Act of March 3, 1891, was passed, as is well known, and as has frequently been stated by this court, to relieve its crowded docket. There is nothing in the act itself, or in the circumstances surrounding its enactment, which lends color to the notion that Congress intended to grant the right to review any judgment which was not reviewable before the passage of the act. Had Congress designed to make such a radical change in the rules of practice and procedure which had been settled in the courts of the United States for more than a century, the act itself would have expressed that intention in clear and unmistakable terms, and not left it to a mere possible implication.

The decisions of the Supreme Court on this subject must have been well known to the distinguished members of the Judiciary Committee of the Senate at the time the Act of 1891 became a law, and it was but a few years prior to its passage that Mr. Justice MILLER in *ex parte* Fisk used the following words:

> "There can be no doubt of the proposition that the exercise of the power of punishment for contempt of their orders by courts of general jurisdiction, is not subject to review by writ of error or appeal to this court. Nor is there in the system of federal jurisprudence any relief against such orders when the court has authority to make them except through the court making the order, or possibly by the exercise of the pardoning power."
>
> *Ex parte* Fisk, 113 U. S., 718.

The notion that the Circuit Court of Appeals Act of March 3, 1891, enlarged the federal appellate jurisdiction, appears to have originated in the remarks of Judge LACOMBE in the Spofford case (62 Fed. Rep., 443). In that case, Judge LACOMBE, conceding that by the decisions of this court, the action of a Circuit Court in committing for contempt, could not be reviewed on appeal or writ of error, said:

> "The old common law rule, however, that the order of a court, whose decisions on all other questions are reviewable, is sacred, and not to be inquired into, when it inflicts punishment for contempt, seems abhorrent to the sense of natural justice. It puts the property and personal liberty of one individual practically at the mercy of another, who, being human, may presumably act, upon occasions, mistakenly, or from prejudice or passion. And it may well be that the Circuit Court of Appeals may find in the broad grant of appellate jurisdiction to review final decisions of the Circuit Courts 'in all cases other than those (where jurisdiction to review is conferred on the Supreme Court),' which is contained in Section 6 of the Act of 1891, sufficient warrant for holding that final orders, such as the one here moved for, may be by it examined into, reversed or otherwise determined."
>
> *In re* Spofford, 62 Fed. Rep., 443, 444.

By these observations Judge Lacombe has set his judgment against the judgment of the most learned jurists of England and America, and has undertaken to override a practice which has been recognized and in force for more than one hundred years.

In the Crosby case, 3 Wils., 188, 204, Mr. Justice BLACKSTONE said:

> "It would occasion the utmost confusion if every court of this hall should have power to examine the

commitments of the other courts of the hall for contempts; so that the judgment and commitment of each respective court, as to contempts, must be final and without control. It is a confidence that may with perfect safety and security be reposed in the judges * * *. The objections which are brought of abusive consequences prove too much because they are applicable to all courts of *dernier resort*."

Mr. Justice STORY, in *ex parte Kearney*, *supra*, said:

"The argument of inconvenience has been pressed upon us with great earnestness. But where the law is clear this argument can be of no avail, and it will probably be found that there are also serious inconveniences on the other side. Wherever power is lodged, it may be abused. But this forms no solid objection against its exercise. Confidence must be reposed somewhere."

And the Supreme Court of Pennsylvania, in Williamson's case, *supra*, said:

"If the power be abused there is no remedy but impeachment. The law was so held by this court in McLaughlin's case, 5 W. & S., 276, and by the Supreme Court of the United States in Kearney's case, 7 Wheat, 38. It was solemnly settled as part of the common law in Brass Crosby's case, 3 Wils., 188, in which sat two of the foremost jurists that England ever produced. We have not the smallest doubt that it is the law, and we must administer it as we find it. The only attempt ever made to disregard it was by a New York judge, 4 Johns Rep., 345, who was not supported by his brethren. This attempt was followed by all the evil and confusion which Blackstone and Kent and Story declared to be its necessary consequences."

Williamson's case, 26 Pa. St., 18.

The argument suggested by Judge Lacombe in *re* Spofford, *supra*, that the power of the trial court to commit for contempt is liable to abuse, has been analyzed and considered by all the eminent authorities whom we have cited in this brief. They have always held that the administration of justice demands that such power should be lodged in the trial court, and that without such final power, confusion and disorder would ensue and the authority and dignity of the court itself be seriously impaired.

The argument of Judge Lacombe, moreover, proves too much, because, if it is abhorrent to the sense of natural justice that a commitment for contempt of one not a party to the suit can not be controlled, it is equally abhorrent to hold that one who is a party to the suit, and is imprisoned for contempt, must sit in prison until a final decree has been rendered in his case.

The right to review orders committing for contempt must be determined by the meaning of the statute itself, construed in the light of the evil which the statute was designed to cure, and not by some fanciful principle of natural justice.

The contention that the Act of 1891 operated to enlarge the appellate jurisdiction was made in *McLish* vs. *Roff*, 141 U. S., 661, with reference to the jurisdiction of this court under section 5 of that Act.

It was there argued that because the fifth section provides that the Supreme Court shall have jurisdiction "in any case in which the jurisdiction of the court is in "issue," that therefore a writ of error might be sued out to review that question before final judgment.

But this court did not approve the reasoning, and held, in effect, that the Act of 1891 did not operate to extend the class of reviewable decisions, and that only final decisions could be reviewed.

> "It is a matter of public history, and is manifest on the face of that act, that its primary object was to facilitate the prompt disposition of cases in the Supreme Court, and to relieve it of the enormous overburden of suits and cases. * * * As to the mode and manner in which these revisory powers may be invoked, there is, we think, no provision in the act which can be construed into so radical a change in all the existing statutes and settled rules of practice and procedure of federal courts as to extend the jurisdiction of the Supreme Court to the review of jurisdictional cases in advance of the final judgments upon them."
>
> *McLish* vs. *Roff*, 141 U. S., 661-666.

In other words, the purpose of the Act, as construed by this court, is not to enlarge the appellate jurisdiction of the courts of the United States, but only to change the distribution of that jurisdiction.

This view is strengthened by the fact that the Act of 1891 does not repeal specifically any of the earlier statutes regulating appeals and writs of error, except so far as necessary to provide a place in the Federal judicial system for the new Circuit Courts of Appeals.

Conclusion.

Our argument, in short, is that the law has never been altered, and that "the exercise of the power of punishment for contempt of their orders, by courts of general jurisdiction, is not subject to review by writ of error or appeal." But if it be held that the Act of 1891 operated to enlarge the

appellate jurisdiction, then we still insist that "contempt of court is a specific criminal offense" and that a conviction thereof can only be reviewed by writ of error and not by appeal.

Respectfully submitted,

JACOB NEWMAN,
SALMON O. LEVINSON,
BENJAMIN V. BECKER.
Counsel for Appellee.

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Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1902.

No. ~~468~~. 1142.

EDWARD E. BESSETTE,
Appellant,

vs.

W. B. CONKEY COMPANY,
Appellee.

APPLICATION TO THE SUPREME COURT TO CONSIDER THE WHOLE RECORD.

(Memorandum Attached.)

WILLIAM VELPEAU ROOKER,
Attorney for Appellant.

Burford Print 11 Indianapolis.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1902.

No. 462.

EDWARD E. BESSETTE,
Appellant,

vs.

W. B. CONKEY COMPANY,
Appellee.

APPLICATION TO THE SUPREME COURT TO CONSIDER THE WHOLE RECORD.

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WILLIAM VELPEAU ROOKER,
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APPLICATION TO THE SUPREME COURT TO CONSIDER THE WHOLE RECORD.

(Memorandum Attached.)

The appellant, Edward E. Bessette, hereby makes application to the Honorable the Supreme Court of the United States, that the whole record and cause herein may be sent up from the United States Circuit Court of Appeals for the Seventh Circuit to this Honorable Court for its consideration, and the appellant, as a part of this his application, hereby furnishes this Court with a duly certified copy of the whole of said record, the same being marked "Exhibit A" and filed herewith, and he humbly prays that upon

consideration of said record that the judgment of the United States Circuit Court for the District of Indiana be in all things reversed.

WILLIAM VELPEAU ROOKER,
Attorney for Edward E. Bessette.

The W. B. Conkey Company, appellee in the cause above entitled, will take notice than on Monday, the 19th day of January A. D. 1903, or as soon thereafter as counsel can be heard, Edward E. Bessette, the appellant, will, at the Court Room of the Supreme Court of the United States, in the City of Washington, D. C., present the foregoing motion to the Honorable the Supreme Court of the United States and thereupon ask that said motion be heard.

WILLIAM VELPEAU ROOKER,
As Attorney for the Appellant, Edward E. Bessette.

We hereby acknowledge the receipt of a copy of the foregoing motion and notice this 8th day of January, A. D. 1903.

MORRIS & NEWBERGER,
Of Attorneys for the Appellee, The W. B. Conkey Company.

MEMORANDUM: The appellant's reasons for the presentation of this motion are the same as those stated in the motion to advance, which is herewith concurrently presented, and which reasons are amplified in the appellant's brief in this cause in this Court and in his brief in this cause in the United States Circuit Court of Appeals for the Seventh Circuit, all of which have been duly filed in the office of the Clerk of this Court.

Respectfully submitted,

WILLIAM VELPEAU ROOKER,
As Attorney for the Appellant, Edward E. Bessette.

Indianapolis, Ind., January 8, 1903.